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Canada

RESTRICTIVE TRADE PRACTICES COMMISSION

[14]

REPORT

Concerning the Distribution, Supply and
Sale of Plumbing Supplies and
Related Products



DEPARTMENT OF JUSTICE
OTTAWA



ROGER DUHAMEL, F.R.S.C.
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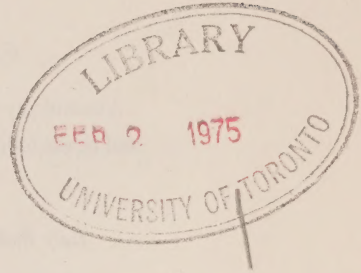
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RESTRICTIVE TRADE PRACTICES COMMISSION



REPORT

CONCERNING THE DISTRIBUTION, SUPPLY AND
SALE OF PLUMBING SUPPLIES AND
RELATED PRODUCTS

COMBINES INVESTIGATION ACT

Ottawa
1963

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Ottawa, Canada


1964

RESTRICTIVE TRADE PRACTICES COMMISSION

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Ottawa, June 24, 1964

Honourable Guy Favreau, P.C., Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to transmit to you the French and English texts of a report by the Restrictive Trade Practices Commission.

This report follows from an inquiry carried out under the Combines Investigation Act concerning the distribution, supply and sale of plumbing supplies and related products.

Yours faithfully,

(Sgd.) Robert S. MacLellan

Robert S. MacLellan
Chairman

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INTRODUCTION

ORIGIN AND NATURE OF THE INQUIRY

The Director of Investigation and Research under the Combines Investigation Act conducted an inquiry into the distribution, supply and sale of plumbing supplies and related products in the Province of Alberta. Plumbing supplies were defined as those articles and commodities used by a registered plumber in the performance of his work as a plumber.

The formal inquiry began on April 17, 1959 when the Director applied to the Commission under section 10 of the Act for authority to enter premises and examine books, papers, records and other documents. In April and May 1960, witnesses, most of whom were officials of wholesale plumbing supply firms, were examined before a member of the Commission (See list of witnesses in Appendix A). On the basis of the oral and documentary evidence, the Director subsequently prepared a statement of the evidence containing allegations that certain parties had committed an offence under the Combines Investigation Act.

The allegations of the Director, quoted from his Statement of Evidence, dated March 16, 1962, were:

"330. It is alleged that, beginning in December 1956 and continuing until the time of commencement of this inquiry in April 1959, the persons and companies named hereunder were parties to arrangements having or designed to have the effect, throughout the Province of Alberta, of preventing or lessening competition in and substantially controlling the distribution, supply and sale of plumbing supplies at wholesale, which combination has operated and is likely to operate to the detriment or against the interest of the public within the meaning of Section 2 of the Combines Investigation Act.

331. It is also alleged that, beginning in December 1956 and continuing until the time of commencement of this inquiry in April 1959 the said persons and companies have conspired, combined, agreed and arranged to prevent or lessen unduly competition in the distribution, supply and sale of plumbing supplies at wholesale to the buyers in the Province of

Alberta of such plumbing supplies in a manner contrary to Section 411 of the Criminal Code.

332. The persons and companies referred to in the two immediately preceding paragraphs are:

The J. H. Ashdown Hardware Co. Limited,
157 Bannatyne Ave.,
Winnipeg 2, Manitoba.

Bartle & Gibson Co. Ltd.,
960 Yates Street,
Victoria, British Columbia.

Burgess Building and Plumbing Supplies Limited,
725 - 8th Avenue West,
Calgary, Alberta.

Crane Limited,
1170 Beaver Hall Square,
Montreal, P.Q.

Emco Limited,
Dundas St. East,
London, Ontario.

Engineering & Plumbing Supplies (Edmonton) Ltd.,
9220 - 106 Avenue,
Edmonton, Alberta.

Grinnell Company of Canada, Limited,
2440 Dundas Street West,
Toronto, Ontario.

Marshall Wells of Canada Limited,
1395 Ellice Avenue,
Winnipeg 10, Manitoba.

Western Canada Hardware Limited,
907-915 2nd Avenue South,
Lethbridge, Alberta.

Western Supplies Limited,
10305 - 108th Street,
Edmonton, Alberta.

Western Supplies (Calgary) Limited,
121 - 58th Ave. S.W.,
Calgary, Alberta.

Mr. John Dyer,
Secretary-Manager,
The Alberta Plumbing and Heating Council,
1102 Lansdowne, S.W.,
Calgary, Alberta."

After the Statement of Evidence was received by the Commission and by the parties against whom allegations were made, the Commission arranged a Hearing as provided for in the Act. The purpose of the Hearing, held in Calgary, Alberta on June 25 and 26, 1963, was to permit the Director to submit argument in support of his Statement of Evidence, and to provide the parties against whom allegations were made a full opportunity to be heard.

The appearances registered at the commencement of the Hearing were as follows:

Mr. A.G. Powell and Mr. J.J. Quinlan, Q.C.	) )	representing the Director of Investigation and Research
Mr. W.G. Chipman, Q.C.		representing The J.H. Ashdown Hardware Co. Limited
Mr. E.M. Woolliams, Mr. R.E. Parsons and Mr. Douglas Korman	) ) )	representing Burgess Building and Plumbing Supplies Limited and Crane Limited and Western Supplies Limited
Mr. L.W. Hyndman, Q.C.		representing Grinnell Company of Canada, Limited
Mr. A.V. Mauro and Mr. F.B. Lamont	) )	representing Marshall Wells of Canada Limited
Mr. G.A.C. Steer		representing Western Supplies Limited and Western Supplies (Calgary) Limited
Mr. A.W. Crossley		representing Engineering & Plumbing Supplies (Edmonton) Ltd.

Mr. E.R. Shedden		representing Bartle & Gibson Co. Ltd.
Mr. J.H. Laycraft and	)	representing Emco Limited
Mr. C.D. O'Brien)	
Mr. W.E. Huckvale		representing Western Canada Hardware Limited.

At this Hearing certain additional evidence was introduced.
The witnesses called were:

John Thomas Bowles	chartered accountant, Peat, Marwick & Mitchell
Bruce Albert Burgess	former manager, Burgess Building and Plumbing Supplies Limited.

Following the Hearing, the Commission prepared this report, pursuant to section 19 of the Combines Investigation Act, which amongst other things instructs the Commission to review the evidence and material, to appraise the effect on the public interest of arrangements and practices disclosed in the evidence, and to recommend the application of remedies provided in the Act or other remedies.

CHAPTER I

THE ALBERTA PLUMBING AND HEATING COUNCIL

1. The Organization: Formation, Membership, The Secretary-Manager

The Alberta Plumbing and Heating Council was formed in 1956, as an association of the plumbing supplies wholesalers in Alberta. At the founding meeting held on December 12th, 1956, the following persons representing the companies shown opposite their name, were present:

W.A. Graham	Western Supplies Limited
F. Hagen	Bartle & Gibson Co. Ltd.
G.W. Eckstein	Crane Limited
W.H. Rushton	The J.H. Ashdown Hardware Co. Limited
C. Shore	Grinnell Company of Canada Ltd.
J. Todd	Emco Limited
R. Watt	Engineering & Plumbing Supplies (Edmonton) Ltd.
G. Black	Western Canada Hardware Limited
B. Burgess	Burgess Building and Plumbing Supplies Limited
H.A. Cummings	Marshall Wells of Canada Limited
N.B. Hobbs	Crane Limited
J.M. Kerr	The J.H. Ashdown Hardware Co. Limited
F.A. Meyers	Marshall Wells of Canada Limited
D.H. McMillan	Crane Limited
H. Taylor	Emco Limited
N.G. Webb	Western Supplies (Calgary) Limited

According to the minutes of the meeting the members adopted by-laws, appointed Mr. John Dyer, retired Branch Manager of Ashdown at Calgary, as Secretary-Manager, and provided the association with an annual budget of \$8,200.00. As of May 1960, the Council was still functioning without change in its membership.

The by-laws listed the objectives of the new association. They included the circulation of general statistical information of use to the members, as well as rules and regulations at all government levels affecting the industry. They proposed programs for sales training, distribution efficiency, "up to date merchandising techniques" and education in credit and collection procedures. Committees were to be formed to discuss problems with manufacturers of the products distributed. New members were to be admitted if they possessed "the proper qualifications" upon the unanimous approval of the members. Each member would have one vote, which might be cast by proxy.

Rules for the appointment of the executive and officers recognized an equal voice in the Council for the "Northern" Zone and the "Southern" Zone. The Executive Committee was empowered to conduct the regular business of the Council, but "the transactions of the Committee and each officer, agent and employee of the Council shall be subject to the approval and confirmation of the majority at a general meeting at which a quorum is present".

The Secretary-Manager, "hired on a continuing basis" was to be responsible to the Chairman and was to look after correspondence, notices of meetings, the council office and records, fees and statements, and minutes of meetings. He was not to "divulge any information affecting the business or interests of individual members, or of the Council."

For the purpose of the Council, the province is divided into the Northern (Edmonton) Zone and the Southern (Calgary) Zone. The dividing line is in the vicinity of Red Deer which is included in the Northern Zone. In 1957, nine meetings were held in each zone in addition to the nine provincial meetings. In 1958, three provincial meetings were held and each zone met six times. Some Council members whose business was conducted in both the Northern and Southern Zones were represented in both groups. The membership was as follows:

	<u>Northern</u>	<u>Southern</u>
Ashdown	x	x
Bartle & Gibson	x	
Burgess		x
Crane	x	x

	<u>Northern</u>	<u>Southern</u>
[*] Emco	x	x
Engineering & Plumbing Supplies	x	
Grinnell	x	
[**] Marshall Wells	x	x
Western Canada Hardware . . .		x
Western Supplies	x	
Western Supplies, Calgary . . .		x

The Council's 1957 budget showed the following assessment of dues:

	<u>Calgary</u>	<u>Edmonton</u>	<u>Lethbridge</u>
"The J.H. Ashdown Hardware Co. Ltd.	400.00	400.00	
Bartle & Gibson Co. Ltd.		400.00	
Burgess Building & Plumbing Supplies	400.00		
Crane Limited	700.00	700.00	100.00
[*] Empire Brass Mfg. Co. Ltd.	700.00	700.00	100.00
Engineers & Plumbers Supplies Ltd.		400.00	
Grinnell Co. of Canada Ltd.		200.00	
[**] Marshall-Wells Ltd.	400.00		
[**] Marshall-Wells Alberta Co. Ltd.		700.00	
Western Canada Hardware Ltd.			400.00
Western Supplies (Calgary) Ltd.	700.00		
Western Supplies Limited		800.00	
		(incl. Red Deer)	
	<u>3300.00</u>	<u>4300.00</u>	<u>600.00</u>

TOTAL - 8200.00¹²

- [*] Emco Limited was formerly known as Empire Brass Mfg. Co. Ltd.
- [**] These companies are predecessors of Marshall-Wells of Canada Limited

All Council members were also members of the Canadian Institute of Plumbing and Heating, a national organization. There is no evidence connecting the C.I.P.H. with the subject of this report.

At many of the meetings, in furtherance of the objectives stated in its by-laws the Council discussed credit problems in relation to particular customers. A wage survey in the industry was undertaken. Agreement was reached as to a "flat donation" to the "plumbing union contractors," in lieu of individual donations "for bonspiels, dances, conventions, monthly meetings and advertising".

However, the evidence indicates that the deliberations of the group also extended to prices, discounts, special project discounts and an easy reckoning basis for tenders to government bodies.

2. The Marketplace; the Distribution of Plumbing
Supplies in Alberta; the Extent of
Market Control Exercised by
the Council Members

At the time of formation of The Alberta Plumbing and Heating Council the wholesale distribution of plumbing supplies and related products in Alberta was carried on chiefly by a dozen firms located for the most part in Edmonton and Calgary.

Three of these concerns, Crane Limited, Emco Limited and Grinnell Company of Canada Ltd., are nation-wide companies with branches in all principal Canadian cities. Crane and Emco are also important manufacturers of plumbing supplies. Both operated Alberta branches in Edmonton, Calgary and Lethbridge.

Grinnell's principal sales related to all-purpose piping items used chiefly for heating, sprinkler and plumbing piping systems in industrial plants and large buildings. It does not sell plumbing fixtures and trim nor copper pipe and fittings in Alberta. Most of the company's sales are to supply houses. In 1958 Grinnell made only 4 per cent of its sales directly to plumbers or plumbing contractors. Its single Alberta branch is at Edmonton.

The J.H. Ashdown Hardware Co. Ltd. and Marshall Wells of Canada Limited both have headquarters in Winnipeg and market general hardware lines including plumbing supplies throughout the Prairie Provinces. Ashdown has wholesale branches in Edmonton and Calgary and a distributing sub-branch at Lethbridge. It also has a retail branch at Calgary. Marshall Wells operates wholesale outlets at Edmonton and Calgary.

Bartle & Gibson Co. Ltd. has its head office in Victoria, B.C. and has branches at Edmonton, Calgary and Medicine Hat. Its principal business is the wholesaling of plumbing and heating supplies. In volume sales it is one of the smaller of the Alberta plumbing supply wholesalers.

The remaining seven firms operate for the most part only in the Province of Alberta. Burgess Building and Plumbing Supplies Limited sold plumbing supplies at wholesale in Calgary but did not carry plumbing stock at its Edmonton branch. About 25 per cent of Burgess' sales were of plumbing supplies.

Western Canada Hardware Limited has its head office and wholesale warehouse at Lethbridge and has no other outlets. Its sales are chiefly in Southern Alberta, but it sells also to some extent in Southeastern British Columbia and Southwestern Saskatchewan.

Western Supplies Limited has its head office at Edmonton, has a branch at Red Deer and another recently opened at Dawson Creek, B.C. It wholesales a substantial volume of plumbing supplies in Northern Alberta chiefly to plumbers and plumbing contractors.

Western Supplies (Calgary) Limited is controlled by the same people as Western Supplies Limited but one is not a subsidiary of the other. Western Supplies (Calgary) is the largest wholesaler of plumbing supplies in Calgary and its sales of such items are mainly to plumbers and plumbing contractors.

The eleven companies above listed were the founders and as of May 1960 the members of The Alberta Plumbing and Heating Council. They are also, together with Mr. John Dyer, Secretary-Manager of the Council, the parties against whom allegations have been made in the Statement of Evidence.

Plumbing supplies were also provided to registered plumbers and plumbing contractors by the Cronkhite companies. Cronkhite (Calgary) Limited carries a relatively full line of plumbing supplies at Calgary. Cronkhite (Edmonton) Limited operates a similar but smaller business in Edmonton. These firms make substantial sales on a cash and carry basis to smaller contractors and do not offer their customers an estimation service. They were not at any time members of The Alberta Plumbing and Heating Council.

Besides the Cronkhite companies and the Council members, department stores and pipe line and oil well supply companies also sold plumbing supplies. Pipe fitting and valves sold by

the latter could replace certain similar products ordinarily provided to the plumbing trades by the regular plumbing supply concerns. To sound the effect of this trade in the market, returns of information were requested not only from the Cronkhite companies and the Council members but also from Beatty Bros. Limited, The Canadian Fairbanks-Morse Company Limited, Edmonton Supply Company, Shugarman's Limited, Sinclair Heating Supplies Ltd., W.W. Arcade Ltd. and Walter Woods Limited, all of Edmonton; and T. McAvity & Sons, Limited and Bruce Robinson Electric Limited, both of Calgary. Aside from department stores these were the only Alberta concerns which stocked general plumbing supplies.

The returns of information required the declarants, in addition to some routine background organizational information, to give for each store or branch operated in 1958 and 1959 the total net value of all sales; and separately the total net value of sales of plumbing supplies. The returns also asked for the year 1958 the net value of sales of each concern of plumbing fixtures and trim; copper pipe and fittings; soil and no-corrode pipe; steel pipe, valves and fittings; and other main product lines. Finally, the returns required the wholesalers surveyed to show the percentage of total net sales to each of the following categories of customers: registered plumbers, including plumbing contractors; industrial accounts; cities, towns or municipalities; other plumbing supply houses; hardware stores; others.

On the basis of the sales figures reported in the returns it would appear that the Council members enjoyed the lion's share of sales to the Alberta plumbing supplies market in 1958 and 1959. The Statement of Evidence, as amended by the Director's representative at the Hearing, provides that:

"57. The returns of information show that plumbing supplies to a total value of over \$20,500,000 were sold in 1958 by all the firms reporting. The comparable figure in 1959 was over \$22,750,000. In both 1958 and 1959 the firms that were members of the Council made 87% of such sales.

58. In 1958 the Council members' sales of plumbing fixtures and trim totalled over \$5,300,000 and in 1959 such sales came to a total of almost \$6,000,000. In 1958 Council members apparently made over 89% of the sales of plumbing fixtures and trim that were made in Alberta at wholesale by all the firms that submitted replies to the relevant question in their returns of information.

59. In 1958, the only year covered in the returns of information on this question, the members of the Council, except Grinnell, made approximately 79.5% of their sales of plumbing supplies, by value, to registered plumbers and plumbing contractors. Grinnell's sales were heavily concentrated in sales of steel pipe, valves and fittings and to a large extent were made to customers outside the plumbing trade."³

Of the 13 per cent of supplies sold by other than Council members the sales of the Cronkhite companies were by far the most important and represented considerably more than those of the other fringe competitors put together.

The oral testimony also established that the Cronkhite firms were the only substantial competitors of the Council members. Of significance in this regard was a document introduced by the Director entitled "Wholesalers In Your Territory". This was prepared in 1958 or early 1959 by D.H. McMillan, Manager in Calgary for Crane, for one of his company officials. The paper classified plumbing supply competitors as "Regular Wholesalers", "Oilfield Suppliers & Semi Jobbers" and "Manufacturer's Distributors", and estimated their sales. It is clear from this summary of the competitive field in Alberta that Mr. McMillan regarded Cronkhite (Calgary) Ltd. as the only non-Council regular wholesaler seeking to market a broad range of plumbing items in Southern Alberta. In his oral evidence Mr. McMillan defined his document as "a fair summary" but "still not complete".

However, that the document "Wholesalers In Your Territory" is a true assessment of the competitive situation was confirmed by witnesses who were officials of other Council member companies and of Cronkhite (Calgary). They did not classify the department stores, Woodward's, Simpsons-Sears and Eaton's as competitors. A plumber could not buy as cheaply from department stores; the operation was different, the customers were different. Some witnesses regarded pipe line supply and oil well supply concerns as competitors for the pipe valve and fittings trade; others felt their business suffered very little from this source. There was evidence that some plumbers imported directly from the U.S. and some evidence of supply of materials from points without the province. But the weight of the evidence establishes that a plumber or a plumbing contractor seeking a supply house with a good inventory of the stock of his trade was confined to a member of The Alberta Plumbing & Heating Council or to the Cronkhite companies. Mr. Eldon Woolliams, representing Burgess, Crane and Western Supplies at the hearing held by the Commission, urged that there

were a great many more distributors in Alberta. In support of that he submitted photostats of the yellow pages of the Calgary phone book where some twenty-two names of concerns are listed under "Plumbing and Heating Supplies" including the firms above referred to. Many of these are manufacturers' agencies. In the absence of anything to the contrary Mr. McMillan's "Wholesalers In Your Territory" is to be preferred as a list of the plumbing supplies distributors in the Province of Alberta.

To what extent did Cronkhite compete with Council members? Mr. John Dyer, Secretary-Manager of the Council, was asked:

"Q. Has Cronkhite ever applied for membership in your group?

A. No, definitely no.

Q. Has Cronkhite ever been invited to join your group?

A. No, they operate, as you know, a cash and carry business.

Q. Does any of your group operate a cash and carry business in Calgary?

A. Not in Calgary or Edmonton. Cash and carry operations are vicious competition.

Q. Why?

A. Because they do not run a complete service. The prices are from eight per cent to 12 per cent lower than the prices of the members of this group, shall I say.

. . .

Q. Can cash and carry sellers compete in selling to large contractors?

A. They are not set up to render the service, I feel. For instance, they give no credit. They won't make any deliveries, they don't have a quotation or estimation department and so on down the line. They do not render the complete service to the plumbing trade as do the regular jobbers."⁴

Cronkhite certainly had many problems in common with the members of the Council. It was in the same business. One would expect that the objectives of the by-laws to exchange credit information, conduct wage surveys etc. would be advanced by Cronkhite's participation, and that it would serve the normal business interests of the Cronkhite companies to achieve these objectives. Why did the Cronkhite firms not apply for membership? Why were they not invited to join the Council? The answer surely is that given by Mr. Dyer, "They operate a cash and carry business".

The Council members sold goods on credit, delivered them, and provided estimation services. Cronkhite's purchasers did not buy these extra facilities. If they charged the same prices as their fellows in the trade, Cronkhite would be completely without custom. And except where Cronkhite's prices forced them to meet the competition, the Council members were not interested in delivering goods on credit at cash and carry prices. Cronkhite without doubt acted as a check on the Council members' price arrangements. Where a plumbing contractor was prepared to provide his own credit, his own delivery arrangements and to do his own estimating, Cronkhite had to be reckoned with. But apparently the purchasers in this category were rather rare. Most of the rest bought from the wholesalers who were Council members whose "bigger job" facilities they required.

The smaller customer installing house plumbing was sometimes prone to take advantage of Cronkhite's limited service prices. To counter, a "flat price book" was developed, copies of which were found upon the premises of Ashdown, Crane, Marshall Wells, Emco, Burgess and Western Supplies, all of Calgary. The prices were called "flat" because they were subject to no discount except the usual 2 per cent to encourage prompt payment. Crane (Calgary), Western Supplies, Western Canada Hardware, and Emco, were contributors to a price list cooperatively drawn up. Considerable testimony was given concerning this flat price book. A good summary of its purpose and how it was achieved comes from the evidence of Mr. H.A. Cummings, Manager for Marshall Wells in Calgary:

- "A. This is a net price list on some of the most active selling items in the plumbing department, particularly pertaining to housing. I would say this is almost altogether housing materials. We have been going through a pretty active housing programme in the last few years. We ran into the problem three years ago or probably a little more when the Cronkhite people changed their policy and almost over night they were quoting prices on a lot of these materials

that were ten per cent or $12\frac{1}{2}$ per cent below what we were offering. It got pretty rough and something had to be done and something had to be done fast. It only applied to a restricted list of items, not to everything in the plumbing department. So I would say that this list here is made up of most of the materials that are used in a routine housing project.

Q. And stocked by all the jobbers?

A. Well, they are stocked by Cronkhite and ourselves and every other wholesaler for that matter.

Q. Does Cronkhite carry as large a stock as some of the other wholesalers?

A. I would not say they carry a larger stock but I would say Cronkhite's stock on this particular type of material is in excellent shape. Our stock in this particular type of material is as good but in heavy public commercial and industrial we are just not in that type of business. In this type of material we are.

Q. Was this document created after a decision taken by the members of The Alberta Plumbing and Heating Council's southern section?

A. Yes, because something had to be done and taking into consideration the fact that we have a further problem with a very substantial cost involved, the most serious problem we had to live with as a result of this Cronkhite competition was the fact that we had to give credit and plumbers are a little bit hazardous. This was held down to - this had to be priced, shall we say, realistically to take into consideration the prices that they were quoting the plumbing trade.

Q. Cronkhite was quoting?

A. Yes. These prices were available to any bona fide plumber in southern Alberta. This was the guide that we worked with.

Q. Who did the price calculations for that?

A. I could name a couple but I would say there would probably be more involved. You mentioned Western Supplies on fixtures and I would say that Empire Brass or Emco on brass goods."⁵

Thus Cronkhite offered some competition in the limited field of housing plumbing materials and the Council members acted as a group to meet this competition but only in this limited field.

CHAPTER II

PRICE AND DISCOUNT ARRANGEMENTS AND PRACTICES OF THE ALBERTA PLUMBING AND HEATING COUNCIL

1. The Basic Wholesale Price Lists

Copies of price lists in use by each member of the Council in the Spring of 1959 were put in evidence by the Director. The lists, of the type usual to the plumbing trade, contain prices on all plumbing and heating items, with the more numerous plumbing items classified into several sections. Brand identification was retained in some cases, particularly on fixtures. Both in Edmonton and Calgary standard retail prices as listed could be converted to the general wholesale level by applying a 25 per cent discount. Since the prices in the retail lists in Edmonton and Calgary were basically the same, wholesale prices were also the same. However, trade preferential discounts from the wholesale price were calculated differently in the two regions. The Calgary group used a discount system based on quantity and sometimes related to the class of work involved. Purchasers from Edmonton wholesalers were awarded discounts on a preferred basis not related to the amount of merchandise sold. This resulted in different net prices to the plumbing trade as between the Northern and Southern Zones, which will be examined in more detail later.

No catalogue or group of catalogues was circulated in Alberta as a pricing guide for use by wholesalers and the plumbing trade generally. Through a cooperative effort, a compilation was made which served as a price list. One firm or another recognized as a leader in a particular field would issue a price list for certain items which would be accepted by the others. If wholesale prices of any items required adjustment for any reason, whether because of freight rates, increased factory prices, or otherwise, the firm within whose pricing jurisdiction the items fell would issue an amended price list for circulation to the Council members.

An example of the system is contained in evidence of Mr. N.G. Webb of Western Supplies, Calgary:

"A. Well, I have normally over a period of time issued prices on fixtures and if there is a change in the factory price or freight increase or anything that affects the price of fixtures I normally issue new prices.

Q. And within the limits of the Council do you or your company have a special responsibility in this respect, a special position?

A. No, the Council has nothing whatever to do with it. Long before the Council was ever in existence we used to issue prices on fixtures as prices came in. For instance, if there was a change in price in fixtures we would issue a price and that price would go out to all the plumbers and everybody indicating we had changed our price of fixtures whether a decrease, a reduction or an increase, whatever the matter was.

Q. And Western Supplies does the calculation of prices on fixtures?

A. That is what I say, we have issued prices on fixtures as they changed.

Q. Is it to your knowledge that other firms in the Council await the receipt of your price information before changing their price list?

A. Well, the factories of course, advise everybody, all wholesalers that there is a factory change in price and, as I say, I have issued them and we issue them to the other wholesalers and to plumbers as a whole to advise them our prices have changed. I don't know, I would not want to say that they wait until our price change comes out or not but they get our price changes and if they follow them they follow them and if they do not they do not.

Q. But they get it?

A. Oh, definitely, they get it.

. . .

A. Emco have been getting out prices on brass goods and I would say the reason for that is they manufacture brass goods and likely get things quicker.

Q. And Crane?

A. Crane look after pipe and pipe fittings. I think one

of them looks after lead goods and Marshall Wells after soil pipe. I believe that was the way it worked. It was not any collaboration; it was in order to spread the load. That is what those different companies share."⁶

Again, from a letter dated August 5th, 1958 written by Emco's Edmonton manager to the company's Calgary manager:

"Under existing arrangements of dividing up the work, price lists on every thing except copper pipe and fittings have been produced for us by the other wholesalers. These list prices would only have to be copied, not marked up from our Alberta Net Trade Price Book."⁷

Western Supplies, Calgary issued prices on fixtures. Emco provided the price list on brass goods and copper pipe and fittings. Crane was responsible for lead pipe and pipe fittings, Marshall Wells for soil pipe. Ashdown, Calgary circulated prices on water heaters.

In some instances, price changes involving the circulation of new lists, would be automatically attended to by the firm generally charged with pricing the products concerned. Apparently the cooperative pricing practice had been in effect long before the formation of the Council in 1956. At other times price changes followed discussions during or after Council meetings. Found upon the premises of three different wholesalers and introduced as evidence were three copies of a document headed: "VERY IMPORTANT DESTROY AFTER PERUSAL". A copy found at Ashdown, Edmonton was attached to the minutes of a Northern Region Council meeting held on October 22, 1958. The document which was prepared and circulated by Mr. Dyer, the Secretary-Manager of the Council, summed up discussions which followed the meeting:

"FIXTURES It was agreed that new and advanced prices on fixtures would be put into effect just as soon as new prices can be figured. Mr. N.G. Webb agreed to get busy on this immediately."⁸

The circulation of price lists, particularly to members in the northern region, since all pricing was attended to in Calgary, was often the responsibility of Mr. Dyer. Mr. Rushton, Manager of Ashdown Hardware, Edmonton, testified concerning price lists:

"Q. Were those prices circulated up here?

A. I think through Mr. Dyer's office.

Q. They would come to you through Mr. Dyer's office?

A. Yes.

. . .

Q. They would be calculated at some other place, they would come to you from Dyer's office?

A. Yes, as far as Edmonton was concerned we did not calculate the prices.

. . .

Q. Do you know how many people are involved in this co-operative effort?

A. Of the pricing system?

Q. Yes.

A. I believe there are seven or eight in Calgary but I am not sure of the number.

Q. The whole thing is centered in Calgary and the thing comes up here?

A. Yes, as far as Ashdown's branch at Edmonton is concerned we have had no part of the price list."⁹

Mr. John Dyer testified that he had prepared and circulated the following document which bore the caption "Record and Destroy".

"ALL NORTHERN MEMBERS:

At a Southern Regional Meeting held in Calgary last Wednesday, July 31, Southern members felt that we could quite profitably increase our mark-up on plumbers brass. It was felt, however, that the low-priced every-day numbers used in housing should be left at the present mark-up of 30%. All other items should be marked up 35%.

It was also agreed to set up a quantity price on no-corrode pipe and the following was agreed upon:

1 M ft. or over, with or without fittings should enjoy a discount of 10% off wholesale price.

Bulletin on these two price changes will be issued as soon as possible and we are hopeful that the Northern Members will agree to these changes and put same into effect on their territory."¹⁰

In respect of this document Mr. Dyer gave the following evidence:

"A. Well, it would seem that there was a discussion and it was felt we could profitably increase our mark-up of the plumber's brass but whether that was put into effect or not I would not say.

Q. It was agreed that it would be put into effect?

A. I would not say it was agreed. There was an understanding that it should be put into effect."¹¹

A similar document headed "BRASS GOODS MARK-UP" was dated September 20, 1957. This sheet required that certain specified brass "items are to be marked up 30% on cost", and on "Balance of brass goods - Plus 35% on cost". On the same date "NET PLUMBING BRASS CHANGE" was issued showing new prices for over 50 items.

Early in 1959, evidently to meet the competition from imported brass goods, Emco reduced the price of these products across Canada. The evidence contains correspondence from Emco's Edmonton and Calgary Branch Managers pressing the company's head office at London not to mail out new price lists "without written authorization from either Edmonton or Calgary branches".

Mr. Taylor of Emco, Edmonton wrote on March 11, 1959:

"... We have not yet clarified our thinking in Alberta regarding this change and as yet have not been able to agree on new prices."¹²

Mr. Todd of Emco, Edmonton wrote on April 8, 1959:

"We frequently withhold the passing along of price reductions, particularly on copper pipe, and also on other material,

until we can clear our existing inventory and replace them with material bought at the produced [sic] price."¹³

On April 15, 1959 Mr. Todd attended meetings in Red Deer both of the whole Council and of the Northern Branch. The following day he issued some amended prices to his salesmen for distribution on April 17th. Simultaneously Western Supplies, Edmonton put out its list for similar items made by other manufacturers, "EFFECTIVE FRIDAY, APRIL 17 . . .". Of the seven items listed, six bore identical prices to those on the Emco list. The seventh differed by seven cents; \$13.16 on the amended Emco list, \$13.09 on the Western Supply list.

Mr. W.A. Graham of Western Supplies, Edmonton when asked: "Would everybody have got a price information sheet concerning this reduction?" from Emco, replied "Yes". He also agreed that there would be a common effective date for the reduction "following on Emco's lead".

The arrangements between the Council members for the calculation of basic prices at wholesale together with the circulation of price lists to customers so that any Council member could obtain copies of any other member's price lists without difficulty resulted in generally uniform prices. Such price differences as there were would not indicate any real policy of independent price competition.

Mr. Gordon L. Black, President of Western Canada Hardware, outlined the attitude of one of the Council members and its effect upon wholesale plumbing supplies price lists:

"A. . . . Any time we publish a price list we make no secret of this price list.

Q. I realize that.

A. That is why we publish it and we are not ashamed nor do we try to conceal from our competitors what we are offering merchandise for.

Q. Do you check your price book against your competitor's price books?

A. You bet your life we do.

Q. And how do they compare?

A. There is a variation sometimes. We endeavour to be competitive. We frankly do not endeavour to

undersell a competitor and that statement is true, sir, in the plumbing field, in the hardware field and in the sporting goods field. We make no effort to undersell a competitor. We make a solid effort to be competitive.

Q. So would it be a proper interpretation of your evidence in that respect to say that by and large your prices are the same as your competitor's in the plumbing supply field?

A. Yes, sir, I have made the statement to various customers in the hardware field that if they take our catalogue which contains one thousand pages and take one of each item and add up our price list and the Ashdown price list and the Marshall Wells price list there would not be half a cent difference in the final figure in the end for the simple reason that I believe we all need a similar gross margin of profit. If we are high you can bet your bottom dollar it does not take a customer long to advise us.

Q. And if you are low?

A. The sons of guns won't tell you until one of the salesmen comes in and he has had a glorious week because he is low and then, of course, you go back and check up, check your costs and see if you can afford to be low. If you can afford to be low, well and good. Another week goes by and your competitor is peddling at your prices."¹⁴

Part of the Secretary-Manager's duties was to police maintenance of the price structure by the Council members. Mr. Dyer explained his role where there were reports of price cutting:

"A. Well, I would be asked to investigate. I was at times asked to investigate on a report of prices being out of line, either low or too high. It was part of my duties to run these things down.

Q. You did a certain amount of investigating then?

A. On occasion, yes.

. . .

- Q. What was the nature of some of your other investigations?
- A. Just what are you referring to?
- Q. Well, you said on occasion you investigated. I was wondering in what way?
- A. Occasionally a plumber would go to his supplier and say on, say, a certain closet bowl: 'I can buy that for \$32 and your price is \$33'. That complaint would be turned over to me and I would be asked to investigate. I would go to the accused party, as it were, and say: 'Is this true' because in the majority of cases it was found to be just a case of the plumber playing both ends against the middle and trying to force the supplier to give him a lower price. Occasionally it was the pricer's error which happens wherever these human elements come in and then steps could be taken to correct that error so it would not happen again."¹⁵

2. The Discounting System in Southern
Alberta

The difference between the discounting systems in use in the southern region and the northern region was explained by Mr. Dyer, Secretary-Manager of the Council:

- "Q. Where did the discount structures vary then?
- A. Well, Edmonton have had for quite some time a system of preferred discounts which would be discounts off that wholesale price. I don't know how, why or when they were set up but I think they were based on the size of the account. A large operator, perhaps it was felt, was entitled to a larger discount because his account was much more easily handled. The handling charges are much less for a big account than a small one.
- Q. In the Calgary district was there a quantity discount set up?
- A. In the Calgary district we had, of course, the wholesale prices, the established wholesale prices.

Then, there was a quantity discount which applied on quantity. Then there was a job discount based on the size of the job. Those discounts were open to everyone in the trade no matter whether it was large or small providing he qualified for quantity or he secured an order for a job that had the required number of fixtures to warrant the discount."¹⁶

The Director introduced copies of the discount sheets used in the southern region all dated May 1, 1957:

"THE FOLLOWING WILL GOVERN THE
APPLICATION OF QUANTITY
AND PROJECT PRICES

1. When 11 or less fixtures are specified, regular Wholesale prices will apply.

F.O.B. Calgary, Lethbridge, Medicine Hat and Red Deer.

2. When 12 to 24 fixtures are specified, quantity prices will apply as per quantity schedule attached, with the following exceptions:-

Iron Pipe Fittings and	
Nipples	- 20%
Pig Lead	- 10%
Automatic Gas Water	
Heaters	- 5%

F.O.B. Calgary, Lethbridge, Medicine Hat and Red Deer.

3. When 25 or more fixtures are specified for Apartments, Commercial, Industrial and Institutional Buildings only, Project Discounts will apply.

F.O.B. Calgary, Lethbridge, Medicine Hat and Red Deer.

NOTE:-

1. All jobs, without exception, must be cleared through Management.

2. Project Discounts must under no circumstances be extended to Housing." 17 (846)

"May 1, 1957

PROJECT DISCOUNTS

Applicable to Apartment, Commercial Industrial and Institutional Building in which there are specified '25 FIXTURES OR MORE'.

C.I. Enamelled Plumbing Fixtures)			
China Plumbing Fixtures)			
Steel Enamelled Plumbing Fixtures)			
Stainless Steel Plumbing Fixtures)			
Shower Cabinets)			
Plumbers Brass Pipe	)	Wholesale Price		
Range Boilers and Water Heaters	)	less 7-1/2%		
Soil Pipe & Fittings)			
Lead Goods & Pig Lead)			
Oakum)			
No-Corrode Pipe & Fittings)			
Steel Pipe)			
Brass & Iron Body Valves)			
Asbestos Pipe Covering & Asbestos)			
Cement)			
Copper Pipe)			
Copper Fittings		Wholesale Prices less	12 1/2%	
Iron Pipe Fittings & Nipples		"	"	30%
Pipe Hangers & Inserts		"	"	12 1/2%
Welding Fittings		"	"	12 1/2%
Welding Flanges		"	"	Net

- C. I. Boilers & Radiation
 1000 sq. ft. or more C.I. Radiation - Wholesale price less 5%
 Boilers 1000 sq. ft. capacity (Hot Water Rating) and larger - ditto

- F.O.B. Points:-
 Calgary, Red Deer, Lethbridge and Medicine Hat. "18 (847)

"May 1, 1957

QUANTITY DISCOUNTS PERTAINING TO THE PURCHASE
OF PLUMBING MATERIALS
ONE DELIVERY - ONE INVOICE

PLUMBING FIXTURES - 5%

(1) 12 plumbing fixtures with or without brass trim - any type of plumbing fixture may be included to make up quantity, including Shower Cabinets.

The following will count as one fixture:-

Closet Combinations of all types
Separate Bowls with or without Flush Valve
Closet Tanks
Urinal Tanks as separate from layout
Seats may be included with Closets

(2) 6 Bathtubs, any style or hand, [sic] with or without C.P. Brass Trim.

BRASS GOODS - 5%

(1) 25 pieces Finishing Brass, consisting of Tub & Shower Fittings, Tub Fillers, Waste & Overflows, Curtain Rods complete, Combination Basin Fittings, Centreset Fittings, Basin Faucets (pairs count as one piece) C.P. 'P' & 'S' Traps, Legs & Towel Bars, Deck Faucets, Swing Spout Faucets, Flush Valves.

The foregoing are the only items which may be included in the count to qualify for the quantity discount, however, if the order qualifies for the discount all other items of C.P. Brass and Bathroom Accessories may be added to the order and the quantity discount will apply thereon.

(2) 50 pieces Rough Brass - consisting of Stops, Stop & Wastes, Boiler Drains, Gas Cocks, Valves, C.I. Traps, Cast Brass Traps, Continuous Wastes, Laundry Tray Faucets and Rough Sink Bibbs.

The foregoing are the only items which may be included in the count to qualify for the quantity discount, however, if the order qualifies for the discount all other items of Rough Brass not above listed may be added to the order and the quantity discount will apply thereon.

CORPORATION BRASS GOODS - 10%

50 pieces comprising Main Cocks, Stops, Stop & Drains and Couplings, etc."¹⁹

"SOIL PIPE AND FITTINGS

150 pieces Soil Pipe and/or Fittings including Lead Stubs and Bends - 5%

20,000 minimum Truckloads for direct shipment from Factory - 15%

NO CORRODE PIPE

Plain or perforated 1000' with or without accompanying fittings - 10%

PIG LEAD

1000# - 10%
2000# - 10/5%

PIPE - 5%

5000# Wrought Steel Pipe
2500# ft. Wrought Steel Pipe and/or Copper Pipe, including Copper Service Pipe.

COPPER PIPE FITTINGS - 5%

500 Smoothbore Copper Fittings including Flux.
Copper Pipe Clips must not be included in the count.

IRON PIPE FITTINGS - As noted.

1000 I. P. Fittings & Nipples - 20%
5000 - ditto - 20/10%

MISCELLANEOUS - 5%

10 Side Arm Water Heaters
10 Robertshaw Thermostats
6 Minneapolis-Honeywell Strap-on Thermostats
12 Closet Seats

RANGE BOILERS

5 Range Boilers, any assortment - 5%
10 - ditto - - 5/5%

AUTOMATIC GAS & ELECTRIC WATER HEATERS

3 Heaters - 5%
6 Heaters - 5/5%

NOTE CAREFULLY

In addition to the quantity discounts listed above for out of stock shipment, we will quote upon request on carloads of Wrought Steel Pipe for direct shipment to your customers. Carload quantities are as follows:

Steel Pipe - 36,000# and 50,000# minimum
carloads

F.O.B. Points: Calgary, Red Deer, Lethbridge
& Medicine Hat¹²⁰

Mr. Dyer's evidence with respect to the first two of these discount sheets (Serials 846 and 847) explains their origin and purpose:

"Q. Do you know what it is?

A. Yes, I do.

Q. Is it just what it says it is?

A. Yes, it is what I referred to earlier, a quantity price structure and job price structure etcetera.

Q. Was that sheet a relevant sheet to the discount structure used by the members of your Council in Calgary?

- A. Yes, in Calgary. I might say Mr. Powell, that my office was used as a mailing centre. I probably mailed this but it did not originate in my office.
- Q. Is this sheet, 846, one of the basic discount sheets from the wholesale price?
- A. That is right and this price was open to everyone in the plumbing business.
- Q. On a quantity basis?
- A. On a quantity basis.
- Q. And in that respect this sheet differs from Edmonton practice?
- A. You would not find a sheet like that in Edmonton, I am quite sure.
- Q. And with respect to sheet 847 also dated May 1st, 1957 -
- A. That is the job basis price, on commercial jobs.
- Q. Commercial jobs?
- A. Well, you will notice at the top it says '25 FIXTURES OR MORE'.
- Q. This did not apply to housing projects?
- A. No."²¹

and later:-

- "Q. Well on document 846, for example, you have seen this before?
- A. Oh, yes.
- Q. How were they created?
- A. I cannot tell you, Mr. Powell. They were in existence before the Council.

- Q. Who gave them to you for mailing? Did they come through a meeting?
- A. No, they came from one of the offices.
- Q. One of the officers?
- A. No, one of the offices of a member of the Council.
- Q. And they became standardized?
- A. They were standardized insofar as the paperwork was concerned but they were not adhered to very well.
- Q. In sheet 846 in the first note it says: 'All jobs, without exception, must be cleared through Management.' Do you know what that means?
- A. That would mean the quotations clerk would have to get the information from his manager, I presume.
- Q. What information?
- A. As to what discounts to use.
- Q. Or as to whether to use these discounts?
- A. That is right.
- Q. And this meant that in every case the manager had to give the o.k. for the use of these discounts?
- A. That is correct, that is my understanding of it.
- Q. And the next note: 'Project Discounts must under no circumstances be extended to Housing'. That just means what it says?
- A. I would say so."²²

There was considerable testimony given by officials of several wholesale firms regarding the use made of the discount sheets and the implication of "All jobs, without exception, must be cleared through Management", which appears on document 846. A good summary of this evidence is to be found in the words of Mr. J. M. Kerr, Manager of Ashdown, Calgary:

- "A. Well, every order that comes along if it is a project the pricer has authority to go ahead and price it as a project. This is, they are using the quantity as specified on the order.
- Q. But before he prices the project he has individual authority with respect to that project from you?
- A. Yes, that is right.
- Q. And that would apply on any bids made as well as the actual pricing of goods sold?
- A. Yes.
- Q. Do you know the purpose of that regulation?
- A. Well, to have it on a standard basis.
- Q. A standard basis among the members?
- A. Among the plumbing trade, our clientele; in other words, they would be all buying on the same basis.
- Q. Did your company receive the original of these sheets through the Council?
- A. Yes.
- Q. And were you present, do you recall, at any discussions of this particular kind of thing where certain things were referred to management?
- A. Yes.
- Q. Do you recall why the members as a group wanted this particular kind of provision on these jobs, that is, that all jobs will be referred to management (that is what it amounts to) before certain discounts were given? Why did the members want that kind of provision on this?
- A. Well, I would say to try and hold a uniform price as far as the trade is concerned."²³

Considerable evidence was also given concerning the following discount sheet:

"HOUSING PROJECTS - CITY OF CALGARY ONLY

- (1) In the City of Calgary only, bona fide housing projects of a minimum of 10 houses or more, for one House Builder, registered under the name of the Plumber & Builder shall be entitled to the following discounts:
- (2) Materials can be taken as required providing the Project is named on both the Charge Sheet and Invoice.

C.I. Enamelled Plumbing Fixtures)	
China Plumbing Fixtures)	
Steel Enamelled Plumbing Fixtures)	
Stainless Steel Plumbing Fixtures)	
Shower Cabinets)	
Plumbers Brass Goods, Rough)	
Finishing and Corporation)	
Automatic Gas Water Heaters	)	Wholesale Prices
Soil Pipe & Fittings	)	Less 5%
Lead Goods & Pig Lead)	
Oakum)	
Copper Pipe)	
Copper Fittings)	
Steel Pipe)	

Iron Pipe Fittings & Nipples	Wholesale Price
	Less 20%

NOTE: This arrangement becomes effective as of this date, and is not retroactive.

Regular terms of payment will apply"²⁴

Again this sheet was the result of discussion and agreement among Council members. Mr. Dyer's evidence concerning the document included the following:

"Q. So the members decided there would be no retroactive feature to the reduction?

A. That is right."²⁵

Mr. H.A. Cummings, Manager of Marshall Wells in Calgary, speaking of the same document:

"Q. Does this document embody the results of the agreed policy in the Council?

A. I would say it did."²⁶

There was also unanimity as regards terms of sale of plumbing supplies beyond Calgary. The evidence identified the following sheet as a "document from Council":

"MEDICINE HAT

Effective Jan. 2, 1958

7 $\frac{1}{2}$ % Job Discount will only apply to Commercial, Institutional, and Industrial Buildings that qualify - Subject to proper clearance.

. . .

Project prices will no longer apply to apartments, regardless of size.

. . .

All Materials for housing and apartments will be sold at the wholesale price. Subject to quantity discounts for legitimate quantities only.

. . .

EXISTING APARTMENTS:

Bona fide orders covering materials to complete said jobs must be placed prior to December 31, 1957, and registered.

Shipment of said materials, as follows:

Roughing-in Materials - Not later than March 1, 1958.

Fixtures & Brass - Not later than April 1, 1958."²⁷

The "flat price book" referred to in Chapter I was introduced by the southern region to meet the competition from "Suppliers supplying at a cash price", notably Cronkhite. It provided no further discount prices on the most common plumbing items, "particularly

pertaining to housing". This list was made up cooperatively by price contributions from those suppliers who proposed the prices for the general list. It provided a group method of combatting cash and carry prices in the field of work done by individual plumbers or other small operators. This method was evidently to be preferred to the effect uncoordinated arrangements might have on the price structure in that sales sphere.

3. The Discounting System in Northern Alberta

The minutes of a Northern Regional Meeting of The Alberta Plumbing and Heating Council held on December 17th, 1957 and signed by Mr. Dyer contained the following item:

"BUSINESS ARISING OUT OF THE MINUTES: Mr. G.W. Eckstein, Chairman of 1958 Co-ordinating Committee, submitted plans for 1958 operations as drawn up by his committee. After a lengthy discussion report as submitted was adopted unanimously and will be put into operation not later than Jan. 8, 1958"

Mr. Eckstein's "plans for 1958 operations" was the discount schedule set forth below (Serials 975-6):

"NORTHERN ALBERTA DISCOUNT SCHEDULE

(Including Red Deer)

All accounts 5% discount except on:

Tools	
Bathroom Accessories	
Water Storage Tanks	
Oil Storage Laundry & Tank Heaters	
Heating Specialties	
Welding Fittings	) Use established firm basis
Steel Flanges	
Range Boiler Jackets	
Steel Septic Tanks	
Oil Burners	
Steam & Hot Water Boilers	
C.I. Radiation	

DISCOUNTS FOR BULK OR QUANTITY - One delivery, one invoice.

Soil Pipe fittings, 20,000# minimum shipment for direct shipment from factory to job	15%
Pipe - 5,000 ft. Wrought Steel	
2,000 ft. Copper Pipe	7½%
Copper pipe fittings, 1000 smooth bore copper fittings, including flux	7½%
No-Co-Rode Pipe, 1,000 ft.	7½%
Iron pipe fittings, 1,000 iron fittings and nipples	20%
5,000 ditto	20/10%

FOR PROJECTS (Apartments, Commercial & Institutional - 25
Fixtures or more)

ALSO

FOR BONAFIDE HOUSING PROJECTS A MINIMUM OF 10 HOUSES
OR MORE FOR ONE HOUSE BUILDER REGISTERED UNDER THE
NAME OF PLUMBER AND BUILDER

C. I. Enamelled Plumbing Fixtures)	
China Plumbing Fixtures)	
Steel Enamelled Plumbing Fixtures)	
Stainless Steel Plumbing Fixtures)	
Shower Cabinets)	
Plumbers Brass Goods)	
I.P.S. Brass Pipe)	
Range Boilers and Water Heaters)	
Soil Pipe & Fittings	)	Wholesale Price
Lead Goods & Pig Lead	)	less 7 1/2%
Oakum)	
No-Co-Rode Pipe & Fittings)	
Steel Pipe)	
Brass & Iron Body Valves)	
Asbestos Pipe Covering & Asbestos Cement)	
Copper Pipe)	
Copper Fittings)	
Copper Fittings		Wholesale Prices less 12 1/2%
Iron Pipe Fittings & Nipples		Wholesale Prices less 30%
Pipe Hangers & Inserts		Wholesale Prices less 12 1/2%
C.I. Boilers & Radiation 1000 sq. ft. or more C.I. Radiation		Wholesale price less 5%
Boilers 1000 sq. ft. capacity (Hot Water Rating) and larger		Wholesale price less 5%

Materials can be taken as required providing the project is named
on both charge sheet and invoice.

PROJECTS TO BE CLEARED BEFORE QUOTING

Project quotations are to be withdrawn immediately jobs are completed.

REGULAR TERMS OF PAYMENT MUST APPLY

INTEREST TO BE CHARGED ON ALL OVERDUE ACCOUNTS

ALL JOBS PRESENTLY HELD TO BE LISTED - PRICE BASIS TO BE CLEARLY INDICATED

IT IS AGREED SUCH PRICE BASIS MUST BE SHOWN ON INVOICE (NO CREDIT MEMOS)

ALL COUNTRY JOBS F.O.B. EDMONTON. " 28

Mr. Eckstein said that he had not asked Mr. Dyer to distribute the foregoing document. However, an official of Ashdown and an official of Bartle & Gibson identified it as sent out "by the Association". Mr. Eckstein rather bitterly declared that "the thing did not hold up any longer than a tender little lamb amongst a pack of wolves."

The provisions of a portion of the list, which generally decreased the discounts available to the plumbing trade, were embodied in letters circulated to their customers by Marshall Wells, Emco, Ashdown, Crane, Western Supplies and Engineering & Plumbing Supplies, all of Edmonton. The rates of discount were the same according to evidence of Mr. R. W. Watt, Manager of Engineering & Plumbing Supplies. Mr. Watt echoed Mr. Eckstein's comment. He said the price improvement "Just never went into operation" -- it was "a lot of wishful thinking". He explained why:

"A. Well, we just did not have enough confidence in each other. The prices we were selling at, we could never draw them back and bring them back to this level. It was impossible and no actual effort was ever made to get these things into operation." 29

Crane attempted to hold to the new price structure in the face of the criticism of a large plumbing contractor who represented a substantial account. Mr. Eckstein, the local Manager at Edmonton wrote to N.B. Hobbs, Western Canada Sales Manager for Crane, on February 8, 1958:

" . . .

Regardless of this I feel we should continue to have faith in our new structure, and in the job being undertaken to strengthen gross and, at the same time generally and gradually attempt to stabilize prices in the area. Actually with this one exception resistance from other customers who received our letter has been negligible up to date.

. . . " 30

However the contractor, who purchased over \$100,000.00 in supplies from Crane in 1957, withdrew his business. "The first six months of 1958 we did not do anything with them at all", said Mr. Eckstein. Apparently six months of the new structure was enough; Mr. Eckstein "lost faith".

Others "lost faith" in the word of Council members to live by their undertakings. At a Northern Region Meeting held on April 22, 1958 both the Chairman, F.A. Meyers and the Vice-Chairman, W.A. Graham, resigned and the association collapsed for a time. Within three months the group reorganized. Mr. Meyers persuaded by a delegation and assured that interest would improve, reassumed the Chairmanship and Mr. Graham became second Vice-Chairman of a refurbished Northern branch of The Alberta Plumbing and Heating Council.

The discount schedule quoted above (Serials 975-6) applied to the plumbing trade generally. In addition to this there were a number of preferred contractors who purchased at more liberal discounts. Sheets dated July 23, 1958, found in Ashdown's files, listed names of contractors in three categories: "12 1/2% Preferred Accounts", "5 & 5% Preferred Accounts" and "5% Preferred Accounts". Attached was a paper that shows the number of purchasers in each category.

"RECAP

12 1/2% Preferred Accounts	13
5 & 5% Preferred Accounts	62
5% Preferred Accounts	<u>46</u>
	<u>121</u>

Aug 11/58

No quotes except at Schedule
Regular Schedule Aug 18/58" 31

[These three
lines in Mr.
Rushton's hand-
writing].

With reference to this material, Mr. J. M. Todd of Emco, Edmonton, after explaining that the discounts were those to be applied to the wholesale net price list, explained the method of using the classifications:

"Q. Did you ever attend meetings at which the discussion involved the moving of an account from, say, a five and five per cent list to a 12 1/2 per cent list?

A. Yes.

Q. When such a move was made was it made by agreement?

A. No, it usually happened before.

Q. Were the members then notified?

A. Well, you can normally find out by contact with the contractor actually.

Q. What was the purpose of circulating these lists within the northern section of the Council?

A. Well, the purpose was to observe what these various accounts were buying at.

- Q. You say to observe what they were buying at. What do you mean by the word 'observe'?
- A. Well, these accounts were buying on this basis although I might not be familiar with all those accounts.
- Q. And if one of the accounts that had not been dealing with you came to you to buy something would you allow a discount in accordance with this list?
- A. If I did not know the account, yes, I think I would." ³²

When one of the Council members wished to increase the discount rate to be granted to one of the contractors, he raised the matter at a Council meeting. If the other members agreed, all would then supply to that contractor at the cheaper price. To illustrate this, a passage is quoted from a bulletin issued September 11th, 1958 by Mr. Dyer which summarized the decisions taken by a meeting of the northern group:

"Red Deer: Subject to agreement of Calgary distributors, it was agreed that the following be placed on preferred list of 5 & 5% accounts:

F. M. Hayhoe
N. M. Burnett

Above subject to approval of next Northern Regional meeting.

DeGrood Plumbing to be placed on either the 5 & 5% or the 5% List as preferred by Calgary distributors. Secretary-Manager will advise re this later.

Shipments to Red Deer on an f.o.b. basis." ³³

Red Deer, while part of the northern territory, lies half way between Calgary and Edmonton. Since increasing the discount

to Red Deer firms might embarrass the Calgary wholesalers, their consent was sought before action was taken on the agreement. Mr. Bruce A. Burgess of Burgess Building and Plumbing who had attended the northern meeting reported the discussion to southern Council members. The Calgary group apparently made no protest. On October 14th, 1958, R.C. Sorenson of Western Supplies, Edmonton, wrote as follows to the Company's Branch at Red Deer:

"The plumbing trade discounts have been revised and we wish to inform you that F.M. Hayhoe, N.M. Burnett and DeGrood Brothers, will receive an extra 5 and 5%, from wholesale on all regular items. . . ." 34

Similarly the bulletin from Mr. Dyer dated September 11, 1958 contained the brief advice to all Council members: "Add Blakely Plumbing to 12 1/2% list". Blakely Plumbing had been promoted from the 5 & 5% list to the maximum discount off wholesale list.

However, the preferred discount lists were not sacrosanct in practice. Oftentimes a contractor would apparently be the recipient of a special discount from one distributor for some time before the distributor would disclose the fact at a meeting of the Council so that the contractor might receive the same kind treatment from every plumbing supply house. The evidence indicated that such was the case with Blakely Plumbing. It was suggested that even before the northern zone had agreed to it at a general assembly, Blakely had been getting the top discount.

The categorization of the plumbers and plumbing contractors into twelve and one-half percenters or five and five percenters was always subject to the strain that good customers might seek out a weak link in the chain and transfer their custom. Mr. Dyer's bulletin of September 11th, 1958, contained the following urgent plea:

"Positively no changes on agreed list of preferred accounts which will be put into effect on Wednesday, October 1, 1958" 35

Mr. R.W. Watt, Manager of Engineering and Plumbing Supplies, testified on this point as follows:

"A. I recall the list, the preferred list that is referred to there. Again it was never put into effect.

- Q. Were lists of preferred accounts with discounts 12 1/2 per cent for some accounts and five and five per cent for other accounts and five for a third classification of accounts prepared?
- A. That is right.
- Q. Did you receive such lists from Mr. Dyer.
- A. Yes, we did.
- Q. Did you provide the names of any of your accounts for inclusion in those lists?
- A. I contributed to the lists, yes.
- Q. And all northern members were provided with copies of those lists?
- A. Yes, but the discounts were never put into effect and never carried out at any time." ³⁶

The evidence indicates that "never" does not describe the situation accurately. Moreover, if the Council arrangements on preferred discounts were not completely observed by the arrangers it was not for want of effort to make the system work. On September 16th, 1958 Mr. W.H. Rushton of Ashdown, Edmonton, instructed the firm's Manager at Grande Prairie, Alberta:

"When you were last in Edmonton I put in your possession a list of plumbing accounts.

I notice in this morning's recap Ted's Plumbing, who was buying eight various fixtures, an order amounting to approximately \$1,000. Possibly you have approached Ted and told him that his project must be finished by November 30th. We want the schedule as placed in your possession to go into effect on October 1, 1958. Also, any quotes on commercial or institutional jobs must be quoted on the new price basis - an extreme discount of 12 1/2%, this to become effective Monday, September 15, 1958, and the balance of the schedule to be used as set out. Whether they be 5 and 5, one 5 or 12 1/2, they must be sold on this basis.

. . . " 37

The Statement of Evidence reviewed several other cases where customers were transferred to a better discount list. When one of the members thought a contractor should have an increased discount there were "discussions among the members". If the proposal was approved, "The subject would be one for majority rule, . . ." and Mr. Dyer would send around a bulletin such as the following:

"CONFIDENTIAL"

Make the following changes on Preferential List of Accounts:

ADD to 5 & 5% List - Bodard Plumbing, Lloydminster
DELETE from 5% List - Bodard Plumbing, Lloydminster
ADD to 5% List: -- Stolen Ivan, Blackfalls" 38

4. Sales by Edmonton Wholesalers in the
Southern Region

As previously noted, the basic wholesale prices were the same in Edmonton as in Calgary, the retail list less 25 per cent. However, further discounts to preferred customers were larger in Edmonton than in Calgary. As a result some purchasers could buy more favourably in Edmonton than in Calgary. For example, where large plumbing contracts were involved, both Emco and Crane sold cheaper in Edmonton than they did in Calgary. And two contractors from Edmonton, Lockerbie & Hole and Canadian Comstock Company, were able to take work in Calgary using materials obtained through Edmonton distributors and pay less for these materials than they (or local Calgary contractors) would have in Calgary.

The Statement of Evidence at page 152 sets forth extracts of correspondence between Mr. N. B. Hobbs, Crane's Sales Manager of Western Branches, and Mr. G. L. Ballantyne of Crane's Head Office, which illustrates the difficulty.

On February 27, 1959 Mr. Hobbs wrote to Mr. Ballantyne:

"The matter is and has been having attention. Eckstein knows the whole story. Eckstein was one of the contributors to the problem which confronts him now. It is something which will not be overcome in a hurry. I called the shot over a year ago but no one would listen.

This matter affects Eckstein with Lockerbie & Hole

as well as Comstock. Latest information from Don McMillan shows these two companies are doing less than 10% of the so called big work in the South Territory which quickly gives you the picture of why Don McMillan will not break his price structure. At the moment, nothing should be done. Don McMillan is watching the situation closely and wants to go along as at present providing there is not a significant trend or further depreciating in his overall territory." ³⁹ [underlining added]

It would appear that the Calgary distributors were content to lose a small portion of the trade in their territory rather than reduce their prices. As far as the larger firms with branches in both cities were concerned their overall sales were not affected, and there was therefore little reason to offer Edmonton prices to Calgary customers.

5. Commitments: Registration and Supervision
of Project Pricing Arrangements

The minutes of a meeting of the Council members of the northern region held on December 17th, 1957 included the following sentence:

"All commitments will be listed with Secretary-Manager prior to Jan.15, 1958".

Mr. J. M. Todd, Manager of Emco at Edmonton, explained what a "commitment" is:

"Q. Do you know what it [sic] meant by the line that appears on the bottom of the same paragraph: 'All commitments will be listed with Secretary-Manager prior to Jan.15, 1958.'

A. Yes, I do.

Q. What was that?

A. A commitment is when you give to a contractor and essentially commit yourself on some price basis which he may use to get a contract. A commitment in effect is a promise you have made to a contractor to give him material for a given job or a given length of time or something like that. It is like

as if there was a gas war on and you went and made arrangements with the fellow to buy at that price for three months so you could run your taxi company on low price gas. That is essentially what a commitment is.

Q. Are they rates of discount or special prices or what?

A. They might be either." 40

The plumbing contractor of a large project would be in a position to place a substantial order for plumbing supplies. The discount agreed upon after negotiation would "commit" the wholesaler to supply goods on that basis for the entire job. The advantage of an arrangement of this nature to the plumbing contractor would be twofold; he would be able to buy more cheaply; and he could tender for the work, assured that prices for his supplies would not increase during the term of the project. The practice uncontrolled had a debilitating effect upon the price structure. There was a danger that competition for projects could become severe, and the special commitment prices might become the rule rather than the exception.

Accordingly, the Council members agreed to register with the Secretary-Manager, lists of all commitments showing the time involved for each contract as well as the discount allowed in each case. Further it was agreed that all "non-bona fide" commitment agreements should cease. Mr. Dyer acting on Council instructions sent out memos to the Northern members requiring that "All apartment and housing projects will be cut off as at Nov.30th, 1958 with the following exceptions:" The list excepted certain projects, evidently where enforceable agreements existed between specified wholesalers and specified customers. The list of exceptions was further narrowed by a later notice from Mr. Dyer which was to be effective January 31, 1959. Finally, the following memo was issued:

"N O T E

ALL APARTMENT AND HOUSING PROJECTS WERE CUT OFF
AS AT MARCH 31, 1959 WITH THE FOLLOWING EXCEPTION:

CRANE LIMITED: Kennedy Plumbing April 30, 1959.

ABOVE TO BE REVIEWED AGAIN AT NEXT NORTHERN
REGIONAL MEETING." 41

The competition between the Council members arising out of commitments was thus well in hand.

6. "Corporation" Sales: Quotations to Municipalities,
Provincial and Federal Governments;
Sales Tax Allowances

In February 1958 the Town of Lethbridge opened tenders for an eight months supply of copper pipe and fittings. Ashdown, Burgess, Emco, Crane, Marshall Wells and Western Canada Hardware, all of Calgary, bid identical prices for the two different types of copper pipe and the seven different kinds of fittings. One other bidder, Canadian Brass Co. Ltd., had also offered these same prices for copper pipe that it did not make and, with one exception, quoted slightly higher prices on the fittings.

In July 1958 the City of Calgary called for tenders on a carload of galvanized pipe, in three sizes. Ashdown, Burgess, Crane, Emco and Western Supplies of Calgary all bid \$13, 947.70 for the three different sizes of pipe called for. Marshall Wells bid high at \$14, 040.15.

The Director introduced in evidence a document dated April 29, 1957 which is quoted at page 128 of the Statement of Evidence:

"Town of Valleyview, Alta.

3/4" Corp Main Stops	. . . . .	3.12.
1" " " "	. . . . .	4.87.
1 x 6 Service Saddle	. . . . .	10.33.
3/4" curb Stops.	. . . . .	6.24.
1" " "	. . . . .	9.78.
Service Boxes	. . . . .	7.95.
3/4" Soft Copper Pipe	. . . . .	40.26.
1" " " "	. . . . .	5129. [sic]
3/4" CC Couplings	. . . . .	1.68.

1" CC Couplings 2.38.

Tax Included.

F.O.B. Valleyview .

2% 30 Days

C.C. All Edmonton Members." 42

A similar document introduced in evidence is a copy of a quotation from T. McAvity & Sons Limited to "Corporation of the Village of Dawson Creek, Dawson Creek, B.C." It listed prices for plumbing supplies. At the bottom appears "Copy to all Edmonton Council Members."

Officials of the companies which had quoted to Lethbridge and Calgary gave testimony as to the procedures that led to the identical quotations. As to the Calgary quotations some testified that all suppliers could very well have arrived at the same price by adding sales tax and freight to the manufacturers' list price for a carload of pipe. The list price would allow the wholesaler a 5% discount or commission. Mr. R. J. Gaetz, Department Manager of Marshall Wells, Calgary, said that the price of \$13,947.70 was the suggested price of the manufacturer. He had received the information by phone from a representative of the manufacturer, who confirmed it in writing. Marshall Wells had bid \$93.05 higher than this. He was asked why. He replied: ". . . We were not interested in doing that kind of business on that low a profit . . .".

The identical tenders to the City of Lethbridge would allow the competitors a profit margin of 4.95%. Again there was some conflict between those who credited the parallel figures to calculations from the same basis and those who said the price was that prepared and circulated by the manufacturer. Strangely, the manufacturer, Canadian Brass co. Ltd., bid higher than the others on its own products.

An agreement to eliminate competition among the Calgary wholesalers as regards quotation to government at all levels (known in the trade as "Corporation" quotations) seems to have been in existence prior to formation of the Council. A letter written on February 3, 1956 by H. Taylor, at that time Emco Manager in Calgary, was placed in evidence, part of which is as follows:

"The City of Calgary have issued a price inquiry for a quantity of approximately 5600 pieces of Corporation

Brass Goods. Tenders close at 1:00 P.M. Wednesday February 15th. You will remember the trouble we got into last year on their Spring inquiry, which we quoted 17 1/2% off list which was actual Jobbers cost, and you gave us what at that time was our usual confidential discount of 5%. Strong objection was taken to our action by the other Manufacturers and Jobbers, and the outcome was that on subsequent inquiries we reached agreement whereby we used Manufacturers List, less the discounts applicable for quantity. We made the same arrangements on Copper Service Pipe and based our prices on the Manufacturers Waterworks Price List." 43

To Notices calling a May 28th, 1957 meeting of the Council was attached a note requesting the receiver to "Please destroy after perusal", and asking:

"NOTE

Will all Council members please bring to this Meeting all Provincial Government quotes dated from April 15 to present date.

Also be prepared to discuss the following:

Base for quoting prices to the following:

1. Department of National Defence.
2. Cities, Towns and Municipalities.
3. Industrial firms, oil companies, railways, etc.
4. Advisability of increasing mark-up with a view to eliminating or reducing present discounts.
5. Policy with regard to commitments for 1958.
6. Low prices being quoted on boilers and wet heat materials.

Please destroy after perusal." 44

Several witnesses testified that "Corporation" quotations were the subject of Council discussions and that Mr. Dyer the Secretary-Manager circulated information for the purpose of establishing a minimum price list for specific calls for tenders. With respect

to the "Town of Valleyview, Alta." documents set forth above, Mr. W. A. Graham of Western Supplies, Edmonton, gave the following evidence:

- "A. There was a time where I explained before where they thought this might be a guide for the chaps to improve their position.
- Q. Was it the responsibility of any particular member to get these things out?
- A. Well, as I recall, this came from Mr. Dyer.
- Q. But he did not originate very much, did he? He got his instructions from somebody?
- A. Oh, yes, he got his instructions. We would have discussed this at a meeting that this would probably be a good idea." 45

Mr. R. J. Gaetz, Manager of Marshall Wells, Calgary, was asked if he recalled the source of his figure in the Lethbridge incident:

- "A. I would say I would have to get those prices from somebody else.
- Q. Would they be from some other member of the Council?
- A. In this case I think I would be inclined to check with Mr. Dyer.
- Q. Was Mr. Dyer in cases like this ordinarily informed as to what the prices were?
- A. Well, Mr. Dyer is secretary-manager of the Council and I would not hesitate to talk to him where I would be reluctant to talk to a competitor.
- Q. This is part of Mr. Dyer's job to counsel people that inquire like this on a question like that?
- A. I would not say not in a general way but it would appear that is obviously where I obtained a price on that particular occasion." 46

The Statement of Evidence sets forth a document found on the premises of Ashdown, Calgary as follows:

"QUOTATIONS - CORPORATION MATERIALS

to

Cities and Towns, on Sewer and Water Contractors

Following basis will be used to figure Tendered jobs of Corporation Materials supplied either direct to the Corporation or to a contractor. Materials would normally be for factory shipment.

- (1) Copper Service Pipe - Current Emco waterworks list for both price and quantity.
- (2) Corporation Fittings - Current Manufacturers Lists, Sales Tax included for both price and quantity discounts.
- (3) Service Boxes - Current Manufacturers Lists, Plus Sales Tax, Plus 20% for Freight, F.O.B. All Alberta Rail Points.
- (4) Valve Boxes - will not be included as part of regularly quoted materials due to uncertainty of price of local Manufacturers. If valve boxes are quoted figure best price, plus 7 1/2% and quote separately to balance of corporation goods.
- (5) Iron Body Valves - Current Manufacturers List and Discounts, Plus Sales Tax, (Freight is Prepaid over minimum weight) Plus 7 1/2%
- (6) Hydrants - Use McAvity price as quoted. Jobber protection will be included in quoted price.

TERMS: All materials 2% - 15th month following date of invoice EXCEPT Hydrants which are NET. The 2% will NOT be figured into the price.

NOTE: (a) All jobs must be cleared through Management.

- (b) In Northern Alberta: no job is to be figured until management has reviewed materials.

- (c) In Southern Alberta: All corporation tenders to have materials reviewed by management before figuring. Contractor inquiries to be cleared with management on job basis prior to figuring.
- (d) There will be no change in price if corporation materials delivered out of stock." 47

Clearly those members of the Council interested in bidding on requirements of the Municipal Corporations in Alberta sought to lessen competition in this field. In some cases this was achieved through rigid group adherence to quotations prepared by the manufacturer and circulated to all concerned. Sometimes Mr. Dyer assisted. In both cases the results were the same.

The evidence concerning the standardization of discounts in quotations to the Federal and Provincial Governments does not indicate that efforts of the Council in this behalf were too successful. Relative to the document above quoted, Mr. J. M. Todd of Emco, Edmonton said that he had brought copies of his Provincial quotations to a meeting after receiving a notice from Mr. Dyer. Other Council members did not produce their records. There was a discussion but it was not too successful because of the lack of full cooperation and Mr. Todd said nothing came of it.

Similarly, while the following document, described by Mr. Rushton of Ashdown, Edmonton, as a document agreed upon by the members, is in evidence, there is no testimony to establish whether the discounts listed were used by the members in Government quotations:

"PROPOSED PRICE BASIS
for
DOMINION & PROVINCIAL GOVERNMENTS

.
.

Wrought Steel Pipe

F.O.B. Calgary)
Edmonton)
Red Deer	) 15%
Medicine Hat)
Lethbridge)

All other points in Alberta
(Excepting far Northern Points) 10%

Iron Pipe Fittings and Nipples	J Net
Valves	Open
Soil Pipe & Fittings	5%
Plumbing Fixtures	5%
Brass Goods	5%
Copper Pipe	5%
Solder Fittings	5%
Miscellaneous Plumbing Goods	5%

TERMS: 2% - 30 days. When quoting terms of payment are to be shown, e.g. Terms: 2% - 30 days. Under no circumstances is the cash discount to be deducted from prices quoted: Prices are F.O.B. Destination. Sales Tax allowance to the Provincial Government is 6%.

The foregoing discounts apply where quantities involved do not call for direct shipment. When large quantities are involved or enquiries cover yearly requirements, consult Management for prices basis to be used in quoting." 48

The words "Sales tax allowance to the Provincial Government" appear in several bulletins and memoranda. Sometimes the advice was extended to apply to both "Dominion and Provincial" Government quotations. The evidence on this matter was that because several members were using varying "factors" to determine how much was allowable for sales tax exemption when quoting to Governments, the Council agreed that all should use the 6 per cent rate for uniformity.

Mr. C. C. Shore, Manager of Grinnell, explained that "now that we have our [manufacturers sales tax] licence we buy all tax exempt. We do not pay the tax until we sell it. Before we got the licence we were paying tax when we bought it".

Apparently the wholesalers paid sales tax as they bought from the manufacturers. When they sold to Dominion or Provincial Governments they would be required to allow for the sales tax on the invoice and then claim for reimbursement of the tax already paid from the Department of National Revenue. Tax varied from item to item, and again in Mr. Shore's words:

"A. . . . We all at one time or another have a different factor that we can claim for because of the number of sales you make that are tax exempt. Some people may be only getting six per cent where someone else may be on eight per cent." 49

W. A. Graham of Western Supplies said his company could reclaim 5.9 per cent on tax exempt sales. G.L. Black of Western Canada Hardware said the Calgary Branch of the Excise Department "authorized" a rate of 6.8 per cent in 1959. F.A. Meyers of Marshall Wells, Edmonton, spoke of 6.3 per cent. Mr. R.W. Watt of Engineering & Plumbing Supplies, Edmonton, reported on the Council's discussion of the matter:

"A. Well, I think what the Council thought at the time was that if everyone used the same sales tax allowance it would not throw people out so far in their quotations. When you quote stuff at a very small mark-up like they do upon quoting the governments and it is really a small mark-up, the difference between the sales tax allowance is just the difference between possibly getting the order and not getting the order." 50

To eliminate discrepancies in bidding that these differing sales tax allowances occasioned, the members agreed upon a 6 per cent sales tax exemption in Government quotations. There was some evidence that members adhered to the agreement but Mr. Shore thought "it was not lived up to."

"Q. How was it not lived up to?

A. Well, there are a lot of people who were, as I say, their factor was larger than six per cent so they would allow seven per cent or 7 1/2 per cent instead of going along with this six per cent." 51

Such concern with the effect of one or two per cent variations arising from differing sales tax allowance rates might well indicate that larger problems respecting prices to Governments had been resolved.

7. Grinnell Company of Canada, Ltd.

Grinnell manufactures and installs sprinkler systems for fire protection. It also manufactures and distributes malleable iron pipe fittings, pipe hangers and valves. In the return of information the company described its product lines as "all-purpose piping items. They are used in heating, steam and industrial process, plumbing, sprinkler, etc., piping systems." Grinnell's piping lines would not ordinarily be used in house and apartment building

plumbing where "copper pipe and fittings have replaced steel pipe and malleable iron fittings to a great extent".

About 25 per cent of the company's sales are made to plumbing supply people. The balance, substantially, is sold to industrial concerns for installation by the customers' own pipe fitters. Since the members of the Council and other suppliers are Grinnell's customers they do not compete with Grinnell by direct sales to plumbers or plumbing contractors. According to its returns the company made only 4 per cent of its sales directly to that class of customer and those sales were all to two firms which Mr. C. C. Shore, Grinnell's Alberta Manager, described as "mechanical" rather than plumbing contractors. The contractors are Lockerbie & Hole and Canadian Comstock Limited both of Edmonton. These concerns "do not do house plumbing or apartment plumbing. It is all industrial work they do".

Mr. Shore illustrated the difference between his custom and that of the other Council members in this way:

"Q. So you are not competitors with them in the plumbing trade?

A. No, not in competition in the plumbing trade.

Q. You say you run into them competitively on industrial business?

A. That is right. For instance, right in this area Canadian Industries Limited might have an inquiry out for pipe and fittings which is our line. It is just something that over the years our company has always done industrial work so we do compete with the plumbing supply wholesalers in those cases.

Q. And in that case you make your sale to Canadian Industries Limited?

A. Well, whatever industry it is. I just used that as an example.

Q. But you sell direct to the company?

A. Yes.

Q. And if Canadian Industries Limited wanted a large plumbing contractor to install something there you would sell to the plumbing contractor if he came to you?

A. No, sir.

Q. You would not?

A. No."⁵²

Grinnell had been a member of the Council since its formation in late 1956. Mr. Shore the only representative from the company who attended meetings of the Council gave this explanation of his participation in Council meetings:

"Q. Why did you bother belonging to the Council,

A. Well, mainly, because as I pointed out earlier they are all customers of ours and it was just a case of giving them some money and mainly because we were invited. We are on the spot here and they just invited us to sit in on the meetings. There were a lot of things that were discussed at these meetings that were of interest to me. Salary surveys, credit policies, although we do not have too much of a credit policy but you can always learn something - different things of that nature.

Q. In fact you are only selling to two plumbing accounts?

A. That is right, sir. Did you ever try to carry water on both shoulders? If you step out of line you will want the next big stock order that one of the supply houses have. It is hardly worth taking a small order direct."⁵³

Later:

"THE WITNESS: But as I say there was a lot of problems they discussed which were of no interest to us or to me and in those cases I would just sort of be blank."⁵⁴

Later:

"A. . . . As I say, they are all customers of mine.

Q. Were you using it as a convenient sales promotion device?

A. Well, the more you see of a person the closer you are getting to him, I believe."⁵⁵

Apart from attendance at meetings of its customers, the evidence does not show that Grinnell took part in or obtained advantages from the price standardization activities of the Council.

Price lists, basic discount sheets and preferred discount schedules were of no interest or use to Grinnell since it was selling not to the trade but to supply houses. Its sales were not confined to Council members. Cronkhite, the department stores - Simpson-Sears, Eaton's, Woodward's, and others were also customers. All of these outlets also bought from Canadian and foreign competitors of Grinnell.

The company quoted prices on its product line to municipal corporations, and the Provincial and Federal Governments. The evidence does not indicate that it derived assistance in that respect from "discussions" with other Council members. One of the products that Grinnell would sell was included in a "basis to figure tendered jobs of Corporation materials" put out by the Council:

"Q. . . .

'Iron Body Valves - Current Manufacturer's List and Discounts Plus Sales Tax, (Freight is Prepaid over Minimum weight) Plus 7 1/2%',"56

Mr. Shore's evidence was that he sold "Jenkins Iron body valves", but he said he did not recognize the document and didn't think he had ever received it.

The evidence does not link Grinnell with the registration of project commitments with the Council or moves to eliminate them, nor did the evidence associate the company with identical tenders to Alberta Municipal Governments.

Since Grinnell Company of Canada, Ltd., except in a very narrow field, was not in competition with the other members, it is unlikely that its prices or sales policies were any different than if it had not been a member of the Council or that it contributed in a substantial way to the lessening of competition in the sale of plumbing supplies in Alberta.

CHAPTER III

CONCLUSIONS

1. Summary

The wholesale plumbing supply firms against whom allegations have been made in the Statement of Evidence submitted by the Director in this inquiry, in the period beginning December 1956 and until the commencement of this inquiry, were all members of The Alberta Plumbing and Heating Council.

The evidence indicates that, with the exception of Grinnell Company of Canada, Limited, this Association was used as a vehicle by these firms toward establishing among themselves a generally standardized system of pricing of wholesale plumbing supplies. The meetings of the Council were employed for the purpose of discussing and reaching agreement on basic wholesale prices, common discounts to be offered to specific customers, cooperatively compiled "flat" prices to meet competition in that limited market not controlled by the Council members, and uniform quotations to municipal corporations.

The Council members sometimes entered into agreements with private individual reservations and hence did not always adhere to the agreements. However the Commission cannot avoid the conclusion that there existed a systematic effort to reduce competition among the members of the Council.

Grinnell Company of Canada, Limited, was a member of The Alberta Plumbing and Heating Council during the period subject of the Director's inquiry. As is shown in Chapter II, this company was not an active participant in the discussions and meetings of the other Council members directed towards reducing competition. Its sales to plumbing contractors were so small that it would seem to have nothing to gain from its membership other than good public relations with the other Council members who were the company's chief customers. It is reasonable to accept the evidence of Grinnell's Alberta Manager that it was for this reason that it participated in Council activities.

Mr. John Dyer acted as Secretary-Manager of the Council since it was founded. He had formerly been branch Manager of Ashdown, Calgary, whence he retired in June 1956. His duties as set forth in the by-laws of the Council were the usual clerical and mechanical duties of an Organization Secretary. He gave evidence that "I had a clear understanding that the handling of prices would not be part of my duties", when he accepted the post.

However, it would seem that Mr. Dyer's assistance to the Council went beyond the scope of a clerk or Corresponding Secretary. His office prepared and circulated copies of price lists and discount sheets to the Council members. Many of these were headed "Very Important Destroy after Perusal" or "Record and Destroy". He prepared agenda for meetings listing subjects that had much to do with "handling of prices".

Mr. Dyer also did some policing for the Council. He testified: "I was at times asked to investigate on a report of prices being out of line, either low or too high. It was part of my duties to run these things down."

The Commission feels that Mr. Dyer allowed himself to become an instrument of the Council both in the achievement of price and discount arrangements and in the placing of these arrangements in effect.

Pursuant to section 19(1a) of The Combines Investigation Act, the Commission finds that the evidence does not disclose that a conspiracy, combination, agreement or arrangement existed which was confined to the lawful purposes of association specified in section 32(2) of the Act.

2. The "undue" Character of the Lessening of Competition

The allegations set forth in the Statement of Evidence and reproduced in the Introduction to this report include the charge that the Council members "have conspired, combined, agreed and arranged to prevent or lessen unduly competition in the distribution, supply and sale of plumbing supplies at wholesale to the buyers in the Province of Alberta of such plumbing supplies in a manner contrary to Section 411 of the Criminal Code."

It will be noted that section 411 (1) of the Criminal Code (which is now included in section 32(1) of the Combines Investigation Act) requires more than just that competition be lessened. The offence consists in lessening competition "unduly". When is the point reached where the lessening of competition becomes undue? How much of the market must come within the embrace of the conspirators or arrangers before it can be said that they have "unduly" removed the natural forces of competition? Considerable argument at the hearing before the Commission centered on the question of whether or not in the present case the agreements of the Council members constituted an undue lessening of competition.

Counsel for the parties pressed upon us as the measure of market control expressed by "unduly", the yardstick of Mr. Justice Cartwright in Howard Smith Paper Mills Ltd. et al v. The Queen (1957) 8 D.L.R. (2nd) 449 at 473:

"In essence the decisions referred to appear to me to hold that an agreement to prevent or lessen competition in commercial activities of the sort described in the section becomes criminal when the prevention or lessening agreed upon reaches the point at which the participants in the agreement become free to carry on those activities virtually unaffected by the influence of competition, which influence Parliament is taken to regard as an indispensable protection of the public interest; that it is the arrogation to the members of the combination of the power to carry on their activities without competition which is rendered unlawful; . . . "

We were also referred to Gosse, The Law on Competition in Canada, 1962, who commented on the effect of the Howard Smith case at page 128:

"Returning to the Howard Smith case, it would seem that Cartwright, J., in summarizing the law, went further than the previous decisions. While it is clear that in the Weidman v. Shragge, Stinson-Reeb and Container Materials cases the Supreme Court found situations of 'virtual monopoly' criminal, nowhere has it said in these three cases that a combination to lessen competition, to be undue, must establish such a monopoly through the elimination of competition. This, however, is what Cartwright, J. said. Locke, J. concurred with his judgment as did Taschereau, J., who equated undue restraint with the elimination of the free domestic market.

Nevertheless, it is noteworthy that the Supreme Court, in the three cases last-mentioned, never raised the question whether a virtual monopoly must be shown in order to prove an undue lessening of competition. It may be that the Supreme Court judges thought that this degree of elimination of competition was necessary but they did not say so. The door had been left open, perhaps unintentionally, for finding combinations of less extent criminal. The Howard Smith case would seem to have closed that door, at least temporarily."

In a recent case dealing with this matter Mr. Justice Batshaw in Regina v. Abitibi Power & Paper Co. (1962) 36 C.R. 96 at pages 148-9 questioned the effect of the Weidman v. Shragge, Stinson-

Reeb and Container Materials cases as interpreted by Mr. Justice Cartwright in the Howard Smith case. Mr. Justice Batshaw said:

"Weighing the foregoing authorities, and having scrutinized all the other decisions on the point, I cannot accept the contention that the meaning of the word 'undue' as hitherto defined by the Supreme Court of Canada has been substantially changed by the opinion expressed by Cartwright J. in the Fine Papers case [Howard Smith case], which he prefaced by stating that he was merely interpreting in his own language the essence of the previous decisions. It must be remembered that the question before the Court in that case was whether public harm or benefit was an ingredient in determining whether the lessening of competition was undue, and the Court unanimously answered that question in the negative; it was not required nor did it undertake to redefine the work 'undue' ab initio.

I conclude, therefore, that it cannot be accepted as our law that only those conspiracies are illegal that completely eliminate or virtually eliminate all competition. To say that the prevention or lessening of competition must be carried to the point where there remains no competition, or virtually none, is tantamount to considering the words 'prevent' or 'lessen' as synonymous with 'extinguish'. Giving to words their ordinary meaning, it would seem that what the legislator intended by 'prevent' or 'lessen' is something less than 'extinguish'. This view was approved by Kellock J. in the Fine Papers case at page 408 when he pointed out that the word 'prevent' is used sometimes in the sense of 'hinder' or 'impede', just as the word 'prévenir' in the French version is commonly used in the sense of 'empêcher'."

Turning to the evidence as to the extent of market control exercised by the accused, Mr. Justice Batshaw noted "the statistics show that the percentage of purchases by the accused mills on an average annual basis ranged from 69.37% to 75.1% with an average of 73.8%". He noted also that these figures did not take into consideration wood purchased for export from Canada which apparently would have reduced the percentages still further. He continued at pages 153-4:

"It is worth observing that in the field of restraint of trade, statistics in themselves do not always adequately tell the story. For instance. The Supreme Court of the United States has rejected any mathematical formula in merger cases, saying: 'The relative effect of percentage command of a market varies with the setting in which that factor is placed'.

(Columbia Steel, 334 U.S. 495, 1948). Our Courts have come to a similar conclusion in the cases in which they have said that the nature of the remaining competition must be evaluated in determining the effect of a restraint of trade."

In this case, there is no doubt that the remaining competition exercised very little restraint upon the merchandising policies of the members of The Alberta Plumbing and Heating Council who in any event, excluding Grinnell, engaged in excess of 80 per cent of the market for plumbing supplies.

3. The Public Interest

At the hearing before the Commission Western Supplies (Calgary) Limited introduced "Condensed Statements of Earnings" for the fiscal years 1955 to 1960. These statements showed some increase in the percentage of net earnings from sales over the period 1956 to 1958. In 1959, however, there was a slight decline, and in the fiscal year 1960 (which ended January 31, 1961) a further sharp decline.

While the figures do not indicate that this company's participation in the conclaves of the Council resulted in substantially increased profits, they do show an improving picture during the period of increasing cooperation. So many factors bear upon the earning of income that it is idle to speculate either whether ascending profits resulted from decreased competition or descending profits from increased competition following the commencement of the inquiry.

The Commission also heard evidence from Mr. Bruce A. Burgess of Burgess Building and Plumbing who testified that in March 1963 his company had filed a proposal in bankruptcy. Mr. Burgess exhibited figures showing a small profit as a percentage of total sales in each of the years 1956 and 1957 and net losses in the years 1958 to 1962. He said that sales of plumbing supplies represented roughly 25 per cent of total sales by the company.

In the view of the Commission, however, a closer look at this exhibit makes it plain that in many of the years listed Burgess Building and Plumbing did enjoy substantial gross profits on plumbing supplies sold - the only part of the firm's operations relevant to this inquiry.

The failure of Burgess Building and Plumbing Supplies Limited could have resulted from any of a number of factors unrelated to the gross markup earned by this firm or other Alberta wholesalers. The source of the company's difficulties might be found on the expense side rather than the revenue side of the ledger. Alternatively, the un-

satisfactory performance might stem from the merchandising of the company's main product lines which were building supply materials. Since there are many causes of losses in a business the presence of losses in itself proves nothing concerning the presence or absence of competition or ability to control the market.

In any event it is difficult to see how arrangements between merchants to reduce competition between them in a manner designed to support or increase the prices of their merchandise to the consumer can be taken as other than harmful to the public interest simply because it is not shown that they were in receipt of exorbitant profits. The right of a consumer to negotiate individually with a supplier cannot be set aside by saying that prices or profits have not (or have not yet) become exorbitant. Nor is it useful to ask "what specific harm have these arrangements done to the public?". The public is entitled to the advantages of a competitive supply. In the absence of that does the public enjoy other advantages of prices or efficiency or stability that counterbalance or outweigh the loss? In this case the Commission cannot see that it does.

4. Recommendations

The Commission finds that the agreements entered into by the wholesale plumbing supply concerns against whom allegations have been made by the Director of Investigation and Research in paragraphs 330, 331 and 332 in the Statement of Evidence were harmful to the public interest.

The Commission recommends that steps should be taken to seek prohibition of resumption of collusive activities by the wholesalers of plumbing and heating supplies against whom allegations are set forth in the Statement of Evidence, under section 31(2) of The Combines Investigation Act, with the exception of Grinnell Company of Canada, Ltd.

(Sgd.) Robert S. MacLellan

Chairman

(Sgd.) Pierre Carignan

Member

(Sgd.) Donald Eldon

Member

Ottawa,
October 28, 1963.

APPENDIX A

Witnesses Examined in this Inquiry by a Representative of the Director of Investigation and Research

Pursuant to section 17 of the Combines Investigation Act, the following witnesses were examined before Pierre Carignan, Q.C., a member of the Restrictive Trade Practices Commission:

April 25, 1960 - at Calgary:

John Dyer,
Secretary-Manager,
The Alberta Plumbing and Heating Council

T.W.C. Kelter,
Manager,
Cronkhite (Calgary) Ltd.
Calgary, Alberta

April 26, 1960 - at Edmonton:

I.P. Dickie,
Retired Department Manager of
Marshall Wells at Edmonton and
sometime employee of Alberta
Plumbing and Heating Council

W.H. Rushton,
Manager,
The J.H. Ashdown Hardware Company Limited,
Edmonton, Alberta

April 28, 1960 - at Edmonton:

R.W. Watt,
Manager,
Engineering & Plumbing Supplies
(Edmonton) Ltd.,
Edmonton, Alberta

C.C. Shore,
Manager,
Grinnell Company of Canada, Ltd.,
Edmonton, Alberta

F.D. Hagen,
Manager,
Bartle & Gibson Co. Ltd.,
Edmonton, Alberta

April 29, 1960 - at Edmonton:

W.K.G. Duffin,
Assistant Manager,
Emco Limited,
Edmonton, Alberta

J.M. Todd,
Manager,
Emco Limited,
Edmonton, Alberta

W.A. Graham,
Sales Manager,
Western Supplies Limited,
Edmonton, Alberta

May 2, 1960 - at Calgary:

A.G. Jackson,
Manager,
Emco Limited,
Calgary, Alberta

G.E. Newall,
Quotations and Pricing Clerk,
Emco Limited,
Calgary, Alberta

L.A. Briscoe,
Employee,
Bartle & Gibson Ltd.,
Calgary, Alberta

May 3, 1960 - at Calgary

J.M. Kerr,
Manager,
The J.H. Ashdown Hardware Company Ltd.,
Calgary, Alberta

G.L. Black,
President and General Manager,
Western Canada Hardware Limited,
Lethbridge, Alberta

J.E. Corson,
Costing and Quotations Clerk,
Burgess Building and Plumbing Supplies Limited,
Calgary, Alberta

B.A. Burgess,
Managing Director,
Burgess Building and Plumbing Supplies Limited,
Calgary, Alberta

May 4, 1960 - at Calgary

F.A. Meyers,
Manager and Vice-President,
Marshall Wells of Canada Limited,
Edmonton, Alberta

H.A. Cummings,
Manager,
Marshall Wells of Canada Limited,
Calgary, Alberta

R.J. Gaetz,
Department Manager,
Marshall Wells of Canada Limited,
Calgary, Alberta

May 5, 1960 - at Calgary:

G.W. Eckstein,
Manager,
Crane Limited,
Edmonton, Alberta

D.H. McMillan,
Manager,
Crane Limited,
Calgary, Alberta

Wilfred Thirlwell,
Estimator,
Western Supplies (Calgary) Limited,
Calgary, Alberta

Norman G. Webb,
Managing Director,
Western Supplies (Calgary) Limited
Calgary, Alberta.

APPENDIX B

References

Chapter I

1. Serial 2652
2. Serial 95
3. Statement of Evidence, p. 19
4. Evidence, pp. 58-59
5. Evidence, pp. 779-81

Chapter II

6. Evidence, pp. 887-9
7. Serial 2727
8. Serial 923
9. Evidence, pp. 199-201
10. Serials 724; 1172
11. Evidence, p. 43
12. Serial 2806
13. Serial 2811
14. Evidence, pp. 604-5
15. Evidence, pp. 98-9
16. Evidence, p. 27
17. Serial 846
18. Serial 847
19. Serial 848
20. Serial 849
21. Evidence, pp. 35-6
22. Evidence, pp. 38-9
23. Evidence, pp. 542-3
24. Serial 850
25. Evidence, p. 47
26. Evidence, p. 765
27. Serial 1058
28. Serials 975-6
29. Evidence, p. 260
30. Serial 1878
31. Serial 883
32. Evidence, pp. 394-5
33. Serial 791
34. Serial 388
35. Evidence, p. 264
36. Evidence, p. 264
37. Serial 921

38. Serial 939
39. Serial 1996
40. Evidence, pp. 388-9
41. Serial 832
42. Serial 842
43. Serial 2655
44. Serial 856
45. Evidence, p. 469
46. Evidence, p. 773
47. Serial 1070
48. Serials 977; 983
49. Evidence, p. 304
50. Evidence, p. 282
51. Evidence, p. 305
52. Evidence, pp. 295-6
53. Evidence, p. 320
54. Evidence, p. 326
55. Evidence, p. 327
56. Evidence, p. 301

